

(d) *Claim for award of fees and expenses*—(1) *Filing*. Prior to the close of the hearing, or within 20 days thereafter, each party may file with the Hearing Clerk a claim for the award of the fees and expenses which he incurred in connection with the oral hearing. No award of fees and expenses to the prevailing party and against the losing party shall be made unless a claim therefor has been filed, and failure to file a claim within the time allowed shall constitute a waiver thereof.

(2) *Fees and expenses which may be awarded to prevailing party*. The term “fees and expenses,” as used in section 7(a) of the Act, includes:

(i) Reasonable fees of an attorney or authorized representative for appearance at the hearing and for the taking of depositions necessary for introduction at the hearing; (ii) fees and mileage for necessary witnesses at the rates provided for witnesses in the courts of the United States; (iii) fees for the notarizing of a deposition and its reduction to writing; (iv) fees for serving subpoenas; and (v) other fees and expenses necessarily incurred in connection with the oral hearing. Fees and expenses which are not considered to be reasonable or necessarily incurred in connection with the oral hearing will not be awarded.

(3) *Form of claim*. A claim for fees and expenses shall be in the form of a written itemized statement of the fees and expenses claimed, which shall include an explanation of how each item was computed, to which there shall be attached an affidavit, made by the party or the party's authorized attorney or agent having knowledge of the facts, that each such item is correct and has been necessarily incurred in connection with the oral hearing in the proceeding and that the services for which fees are claimed were actually and necessarily performed.

(4) *Service of claim*. A copy of each such claim filed shall be served by the Hearing Clerk on the other party or parties to the proceeding.

(5) *Objections to claim*. Within 20 days after being served with a copy of a claim for fees and expenses, the party so served may file with the Hearing Clerk written objections to the allowance of any or all of the items claimed.

If evidence is offered in support of an objection, it must be in affidavit form. A copy of any such objections shall be served by the Hearing Clerk on the other party or parties.

(6) *Reply to objections to claim*. A claimant who is served with a copy of objections to his or her claim may, within 20 days after such service, file with the Hearing Clerk a reply to such objection. If evidence is offered in support of a reply, it must be in affidavit form. A copy of any such reply shall be served by the Hearing Clerk on the other party or parties.

(7) *Further inquiry by examiner*. Whenever it is deemed desirable or necessary for the proper disposition of a claim, the examiner may request statements as to specific matters from either or both parties. Any statements so furnished shall be served by the examiner on the other party.

(8) *Number of copies*. All documents or papers authorized by this paragraph to be filed with the examiner shall be filed in triplicate: *Provided*, That, where there are more than two parties to the proceeding an additional copy shall be filed for each additional party.

(e) *The examiner's report*. The examiner, with the assistance and collaboration of such employees of the Department as may be assigned for the purpose, and within a reasonable time after the termination of the periods allowed for the filing of the submissions of the parties allowed by this section, shall prepare, upon the basis of the evidence received at the hearing and with due consideration of submissions of the parties filed pursuant to this section, his or her report. Such report shall be filed with the Hearing Clerk and shall be prepared in the form of a final order for the signature of the Secretary, but shall not be served upon the parties, unless and until it shall have been signed by the Secretary, as hereinafter provided.

[38 FR 30445, Nov. 5, 1973, as amended at 41 FR 50803, Nov. 18, 1976; 56 FR 175, Jan. 3, 1991; 60 FR 8462, Feb. 14, 1995; 64 FR 38107, July 15, 1999]

§ 47.20 Documentary procedure.

(a) *In general*. The documentary procedure described in this section shall, whenever it is applicable as provided in

paragraph (b) of this section, take the place and serve in lieu of the oral hearing procedure hereinbefore provided. Under the documentary procedure, the pleadings of the parties, if verified in accordance with paragraph (h) of this section, and any report of investigation filed with the Hearing Clerk pursuant to § 47.7 will be considered as evidence in the proceeding. Under the shortened procedure, the pleadings of the parties, if verified in accordance with paragraph (h) of this section, and any report of investigation filed with the Hearing Clerk pursuant to § 47.7, will be considered as evidence in the proceeding. In addition, the parties may submit written proof in support of the complaint, answer, or reply, as the case may be, in the form of verified statements or depositions. After the close of the evidence, the parties may file briefs.

(b) *When applicable—(1) Where damages claimed do not exceed \$30,000.* The documentary procedure provided for in this section shall (except as provided in § 47.15(a)) be used in all reparation proceedings in which the amount of damages claimed, either in the complaint or in the counterclaim, does not exceed \$30,000 (excluding interest).

(2) *Where damages claimed exceed \$30,000.* In any proceeding in which the amount of damages claimed, either in the complaint or in the counterclaim, is greater than \$30,000 (excluding interest), the examiner, whenever he or she is of the opinion that proof may be fairly and adequately presented by use of the documentary procedure provided for in this section, shall suggest to the parties that they consent to the use of such procedure. Parties are free to consent to such procedure if they choose, and declination of consent will not affect or prejudice the rights or interests of any party. A party, if he or she has not waived oral hearing, may consent to the use of the documentary procedure on the condition that depositions rather than affidavits be used. In such case, if the other party agrees, depositions shall be required to be filed in lieu of verified statements. If any party who has not waived oral hearing does not consent to the use of the documentary procedure, the proceeding will be set for oral hearing. The suggestion

that the documentary procedure be used need not originate with the examiner. Any party may address a request to the examiner asking that the documentary procedure be used.

(c) *Complainant's opening statement.* Within twenty (20) days after service of respondent's answer, complainant may file a verified opening statement, accompanied by any pertinent documents, which documents must be identified in the statement. If the answer is verified, complainant's evidence concerning the allegations of the answer should be included in the opening statement.

(d) *Respondent's answering statement.* Within twenty (20) days after service of complainants' opening statement or service of notice by the examiner that complainant has not filed an opening statement, respondent may file a verified answering statement, accompanied by any pertinent documents, which documents must be identified in the statement.

(e) *Complainant's statement in reply.* If respondent files an answering statement, complainant may, within twenty (20) days after service thereof upon complainant, file a verified statement in reply, accompanied by any pertinent documents, which documents must be identified in the statement.

(f) *Use of depositions in lieu of verified statements.* Depositions may be used in lieu of verified statements under paragraphs (c), (d), and (e) of this section.

(g) *Briefs.* Promptly after the conclusion of the presentation of evidence, the examiner shall notify the parties that they may file briefs within twenty (20) days after the receipt of such notice.

(h) *Verification.* Verification shall be made under oath of any facts set forth in the pleading or statement, by the person who signs the pleading or statement. Certification by a notary public is insufficient. The form of verification may be as follows:

_____, being first duly sworn, says that he (or she) has read the foregoing document and knows the contents thereof and that the facts set forth therein are true, except as to matters therein stated on information and belief, and as to such matters he believes them to be true, and that he (or she) is duly authorized to sign the document.

Agricultural Marketing Service, USDA

§ 47.24

Subscribed and sworn to before me this
— day of —, 19—.

(Notary Public)

(i) *Stipulations.* In addition to or in lieu of the statements referred to in this section, the parties may file with the Hearing Clerk stipulations of fact signed by the parties or their representatives. Such stipulations filed with the Hearing Clerk shall become a part of the record.

(j) *Waiver of right to file.* Failure to file, within the time prescribed, any document authorized by this section shall constitute a waiver of the right to file such document.

(k) *The examiner's report.* Within a reasonable time after the time allowed for filing briefs, the examiner shall prepare his or her report in the manner prescribed in § 47.19(d).

(l) *Assignment for oral hearing.* Whenever it is deemed desirable or necessary for the proper disposition of the proceeding, the examiner, upon his or her own or any party's motion, may order the proceeding set down for oral hearing at any stage of the proceeding.

[27 FR 12398, Dec. 14, 1962, as amended at 47 FR 21234, May 18, 1982; 56 FR 175, Jan. 3, 1991; 60 FR 8462, Feb. 14, 1995; 64 FR 38107, July 15, 1999]

§ 47.21 Transmittal of record.

The Hearing Clerk, immediately after the filing of the examiners' report, shall transmit to the Secretary the record of the proceeding. Such record shall include: The pleadings; motions and requests filed, and rulings thereon; the report of investigation conducted by the Fruit and Vegetable Programs; the transcript or record of the testimony taken at the hearing, together with the exhibits filed therein; any statements or stipulations filed under the documentary procedure; any documents or papers filed in connection with conferences; such proposed findings of fact, conclusions, and orders and briefs as may have been permitted to be filed in connection with the hearing as provided in § 47.19(b) and (c); such statements of objections, and briefs in support thereof, as may have been filed in the proceeding; and the examiner's report.

[64 FR 38108, July 15, 1999]

§ 47.22 Argument before Secretary.

(a) *Oral argument.* There shall be no right to oral argument other than as provided in § 47.15(h).

(b) *Briefs.* The Secretary will consider any proposed findings of fact, conclusions, and orders, statements of objections, and briefs filed as provided in § 47.19(b). Briefs filed in accordance with § 47.19(c) and those filed in support of statements of fact will also be considered by the Secretary.

[10 FR 2209, Feb. 27, 1945, as amended at 12 FR 1026, Feb. 13, 1947; 60 FR 8462, Feb. 14, 1995]

§ 47.23 Issuance of order.

As soon as practicable after the receipt of the record from the Hearing Clerk, the Secretary, upon the basis of and after due consideration of the record, shall issue his or her order in the proceeding. Unless the Secretary disagrees with the order as drafted for his or her signature by the examiner, as provided in § 47.19(d), the Secretary shall issue as his or her order the order so prepared by the examiner. If the Secretary deems it advisable to do so, the Secretary may direct that the order be served upon the parties as a tentative order and that the parties be allowed such period of time, not to exceed 20 days, as the Secretary may specify, within which to file exceptions thereto and written argument or briefs in support of such exceptions.

[10 FR 2209, Feb. 27, 1945, as amended at 60 FR 8462, Feb. 14, 1995]

§ 47.24 Rehearing, reargument, reconsideration of orders, reopening of hearings, reopening after default.

(a) *Petitions to rehear, reargue, and reconsider.* A petition for rehearing or reargument of the proceeding, or for reconsideration of the order, shall be made by petition to the Secretary filed with the Hearing Clerk within 20 days after the date of service of the order. Every such petition shall state specifically the matters claimed to have been erroneously decided and the alleged errors. If the Secretary concludes that the questions raised by the petition have been sufficiently considered in the issuance of the order, the Secretary